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URBAN RENAISSANCE

FROM DISCIPLINING TO DISLOCATION
AREA BANS IN RECENT URBAN POLICING IN GERMANY



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Abstract

In German cities, area bans (*Aufenthaltsverbote*) are issued against users of illegalized drugs and other 'undesirables' to bar them from entering certain central city spaces. Drawing on materialist state theory, the expert discourses that legitimize these area bans are analysed in order to understand why this spatial measure of policing is on the agenda right now. I argue that these discourses reveal that area bans are aimed at dislocating undesirables; that they are based on a spatialization of 'danger'; that they are symptomatic of

recent developments in policing in that they abstract from the individual and engage in 'governing at a distance'; that this very abstraction is made possible by the spatial approach of the area bans; and that the bans are therefore a suitable means to police the consequences of neo-liberalism in the entrepreneurial city.

KEY WORDS ★ area bans ★ dislocation ★ drugs ★ Germany ★ legal geography ★ policing ★ spatial fetishism ★ urban renaissance

The criminal justice system, policing, politics of crime, law enforcement – or, as it is called in German, *Innere Sicherheit* ('internal security') – have recently gained – and one should probably say *re-gained* – prominence in urban politics and discourse across Germany (cf. critically StadtRat, 1998; Ronneberger et al., 1999; Wehrheim 2002; Belina and Helms, 2003). This is a vast and complex field which includes, among others, questions over drug use, migration, education, social and health policies. Within this field, all sorts of practices, strategies and discourses, varying over time and space, can be found. Due to this complexity, changes and developments are difficult to approach analytically and all attempts to generalize from the abundance of empirical evidence are in danger of overgeneralization. In this article, I want to offer a detailed analysis of one particular measure of urban policing, the *Aufenthaltsverbote*, which might be best translated as 'area bans' (see following two sections). Building on this analysis I want to argue that policing *space* is currently on the agenda in German cities because it makes concrete the abstractions of

spatial fetishism through practical articulations of state power. Policing urban space in this particular manner, I argue, is a strategy conducive to the neo-liberal urban renaissance (see 'Conclusion').

The article contributes to the growing literature on 'policing space' – a notion which represents a rather broad generalization that needs specification. Relationships between policing and space exist on different levels and various aspects have been studied. Authors such as Feest (1971), Best (1978) and Herbert (1997) have shown how everyday police work is structured, among other things, by geographical imaginations. Whereas this may always have been the case, since the 1990s many authors have emphasized that in the context of neo-liberalism, neo-conservatism and urban revanchism, 'policing space' has gained in importance as '[c]riminality is spatialized ... it is identified with certain kinds of social presence in the urban landscape' (Smith, 1998: 3). On the ideological level, this spatialization of crime is produced by populist criminological theories such as 'broken windows' (Belina, 2006: 135–55; Herbert and Brown, 2006) as

well as in traditional 'geography of crime' (Peet, 1975, Belina 2006: 127–32), in political discourse (Schreiber, 2005) and in the media (Mattisek, 2005). When these ideological spatializations of crime are turned into law, its structuring impact on police work and the urban fabric is intensified. One result is an 'annihilation of space by law' (Mitchell, 1997) for different kinds of underprivileged individuals and groups on different scales and in various ways (cf. Bass, 2001; Merry, 2001; Belina, 2003; Cresswell, 2006; James, 2006). Various authors have contextualized the emerging emphasis on the policing of urban space within discourses and practices of urban restructuring, urban entrepreneurialism, urban revanchism and the urban renaissance (Mair, 1986; Mitchell, 1997; Smith, 1998; MacLeod, 2002; Herbert and Brown, 2006; Helms, 2008). Indeed, a strong argument can be made that recent practices and discourses of urban policing are primarily driven by the new focus on penal policy making in a 'roll out' neo-liberalism in general (Peck and Tickell, 2002: 389). The argument this article tries to add to the discussion concerning the relationship between the neo-liberal urban renaissance and urban policing is this: *policing space* is on the agenda because it transfers the *mental* abstraction from the social which spatial fetishism is all about into the *reality* of the articulation of state power via concrete policing strategies. These very spatializations of crime and policing in discourse, law and practice – i.e. *policing space* – are particularly suitable to control the consequences of neo-liberalism in the city. The argument will be derived from a discussion of one particular measure, the area bans, which are part and parcel of the policing of 'actually existing neoliberalism' (Brenner and Theodore, 2002). Focusing on the relationship between law and space, this article also tries to contribute to the diverse body of literature on 'legal geography' (cf. Blomley, 1994; Chouinard, 1994; Blomley et al., 2001).

Area bans in German cities – their functioning and legal basis

Any person who is issued the map shown in Figure 1 must no longer enter the marked area within the north-western German city of Bremen (pop. 550,000). This area includes the central railway station and the

so-called *Viertel*, the central place for subculture, bars, political activism and, since the 1980s, illegal drugs in the city. After the end of a fairly liberal approach towards illegal drugs in Bremen in the early 1990s (Stöver, 1995), the *Viertel* has become synonymous with illegal drugs, crime and danger among the local public (Alzheimer, 1995; Antirassismusbüro Bremen, 1997: 79–98; Belina, 1999). When the local police together with the Town Clerk's office began issuing and enforcing the area bans in 1992, no legal basis existed for this measure in Bremen's Police Law.

In Germany, preventive police work is regulated by the Police Laws of the 16 *Länder* (federal states), differing slightly from *Land* to *Land*. As Bremen, together with the city of Bremerhaven, forms Germany's smallest Land, it has its own Police Law. All 16 Police Laws include a repertoire of standard measures which the police can apply in order to prevent crime, including, for example, the questioning, searching or preventive imprisonment of suspects. Theoretically, German law, deriving from the tradition of Roman law, and in contrast to the case-law tradition of the UK or the US, attempts to cover every possible case in advance. For unpredictable cases, every Police Law includes a 'general clause' which states that the police can apply 'the necessary measures' for the prevention of danger.

In 1992, area bans were first issued against non-Germans in Bremen on the basis of special federal laws for foreigners. From 1994 onwards, this was expanded to German citizens suspected of belonging to the drug scene (Antirassismusbüro Bremen, 1997: 133), now on the basis of the general clause of the Bremen Police Law. This procedure was declared unconstitutional in a first court case in 1997. For a measure as far reaching as the area bans, the court ruled, a separate legal basis was necessary (Hecker, 1999: 261). Less than a year later, this decision was overruled by a second court. This higher court accepted the general clause as a legal basis for the bans. This clause, the court said, is designed 'to cope with more complex and atypical situations of danger', especially ones 'new in type and extent' (Oberverwaltungsgericht Bremen, 1999: 315). As critics commented, this argument does precisely *not* apply to the case of the open-air drug scene in Bremen, a phenomenon which had been well known for approximately 20 years at the time (Roggan and Sürig, 1999: 310). Furthermore, such reasoning, that draws heavily on the general clause,

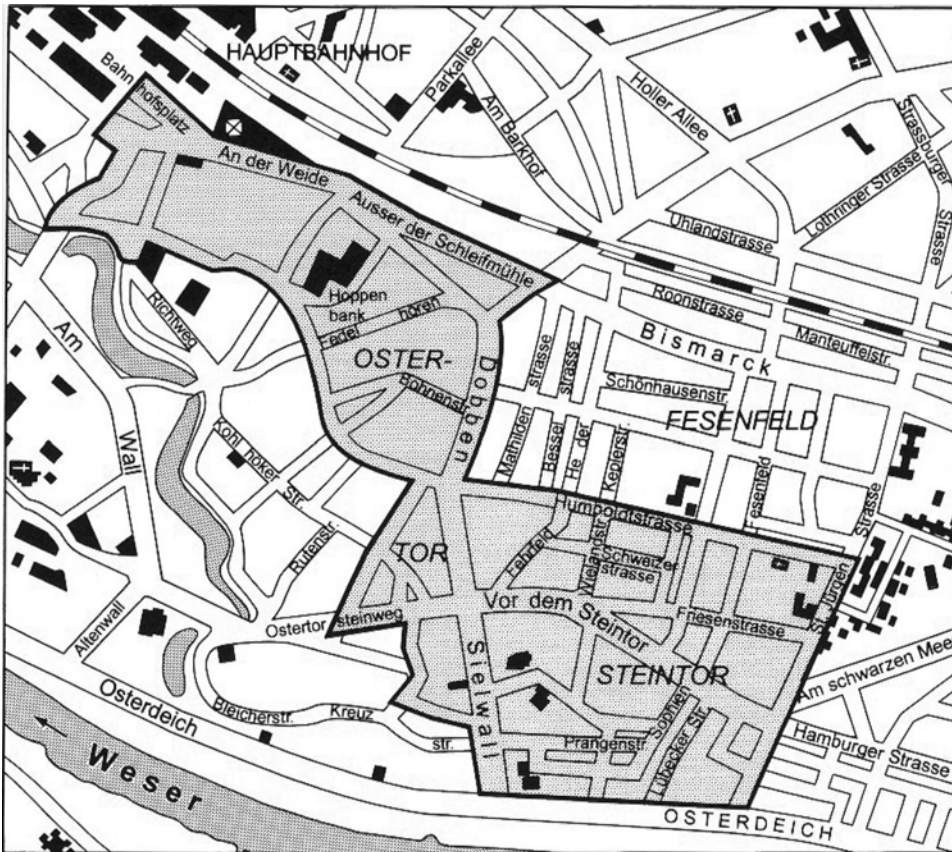


Figure 1 Area bans in/for parts of Bremen

Source: Belina (1999: 62).

is in danger of removing any limits on Police authority (Roggan and Sürig, 1999: 309). It was only in 2001 that area bans were introduced into the Bremen Police Law as a standard measure as BremPolG § 14, 2 (cf. Table 1). As this chronology indicates, it was the police – and not Bremen’s legislative body (the *Bürgerschaft*) – that first decided to implement this new type of measure, thus granting new authority *to itself* (cf. Roggan and Sürig, 1999: 311–12). This initiative by the executive was legitimized ex post first by the Judiciary, and only then followed by legislation.

The new paragraph of the Bremen Police Law concerning the area bans begins as follows: ‘If facts justify the assumption that a person will commit a crime in a certain area, he can be prohibited from entering or loitering in that area for a certain time.’¹¹

In introducing this paragraph, Bremen followed the example of Lower Saxony, where area bans were first introduced into a federal state’s Police Law in 1996, following the previous year’s *Chaos Tage* (‘chaos days’). This gathering of punks in the city of Hanover brought burning barricades, the looting of a supermarket but also violent police onto television-screens – something unheard of in Germany since the late 1960s. As a result, Germany’s up to that date most liberal Police Law was changed (cf. Seifert, 1996). This was also the first time area bans – practised since around 1992 not only in Bremen, but in many German cities (Lestrang, 1997: 217) – received some (although very little) media coverage (Lestrang, 1997: 218). As Figure 2 shows, by 2005, 13 out of 16 Länder had introduced area bans into their Police Law as a standard measure.

Table 1 Introduction of area bans into Police Laws

Land	Law	Introduced ^a
Baden-Württemberg	—	—
Bavaria	—	—
Berlin	ASOG § 29, 2	11.05.1999
Brandenburg	BbgPolG § 16, 2	13.12.2000
Bremen	BremPolG § 14, 2	25.10.2001
Hamburg	SOG § 12b, 2	09.06.2005
Hesse	HSOG § 31, 3	12.12.2003
Mecklenburg-Western Pomerania	SOG M-V § 52, 3	24.10.2001
Lower Saxony	SOG § 17, 4 ^b	25.05.1996
North Rhine-Westphalia	NWPoLG § 34, 2	08.07.2003
Rhineland-Palatinate	POG § 13, 3	03.03.2004
Saarland	SPoLG § 12, 3	05.05.2004
Saxony	SächsPoLG § 21, 2	22.04.1999
Saxony-Anhalt	SOG LSA § 36, 2	20.07.2000
Schleswig-Holstein	—	—
Thuringia	PAG § 18, 2	20.06.2002

Notes:

^a Date of parliamentary decision.

^b Until 2003: NGefAG § 17, 2.

Most laws state that area bans are executed jointly by the police and the administration of the Town Clerk's office, in some cases though only one of the two is in charge (cf. Finger, 2005: 85f.). The fact that three out of the 16 Länder have not introduced area bans into their respective Police Law does not necessarily mean that they are not practised there. In Munich, Bavaria, for example, area bans are still applied based on the general clause (§ 7, 2 LStVG; cf. Bayerischer Verwaltungsgerichtshof, 2000).

What are the area bans all about?

The legitimizing discourses around the area bans rely on a spatial argumentation that crucially links the mere presence of undesirables to 'crime', making their eviction a task for the *police*. Two specific strands within these discourses will be analysed to demonstrate this link: court decisions concerned with the bans' legality and legal scholars commenting on them affirmatively (see following two subsections). In focusing on these two legal expert discourses, other discourses, such as the media and critical academic ones, are deliberately

excluded. This selection of discourse is explained first by reflection on the legal expert discourses' status and importance.

The legal expert discourse as part of the società politica

A key assumption for my argument is that the legal expert discourses are somewhat 'closer' (to use a spatial metaphor) to the social processes and the mechanisms of social control which materialize in area bans. I want to illustrate this by reference to materialist state theories that follow Gramsci's ideas from his prison notebooks (Gramsci, 1991ff.).² Gramsci's central theoretical achievement concerning state theory was the inclusion of the "'private" hegemonic apparatuses' (Gramsci, 1991ff.: 816) of civil society (*società civile*) into an enlarged understanding of the state in order to explain the process of hegemony production. Hegemony for Gramsci is based on coercion *and* consent and results from continuous struggle between various groups and fractions within the state. Whereas *società politica*, the state in the strict sense that is situated at the centre (to keep the spatial metaphor) of any hegemonic project, is based on coercion, it is embedded in the *società civile*, civil society, where 'political and cultural hegemony of one social group over society as a whole' (Gramsci, 1991ff.: 729) is produced. 'Historical blocs' thus rely on both, *ideological* legitimation that has to be 'armoured with *force*' (Gramsci, 1991ff.: 783; my emphasis).

The two discourses in question here are located between the two spheres of the state as defined by Gramsci. First, written court decisions are authored by the Judiciary – from within *società politica*. Yet, their role is the explanation and legitimation of state practices, also making them part of the processes by which the *società civile* produces hegemony. Second, legal scholars who support area bans are academics and as such part of *società civile*. Yet, their affirmative comments do not discuss area bans in any academic (i.e. distanced) manner, neither do they weigh positives against negatives nor do they try to explain area bans. These commentators favour a tougher stance of the state, thereby directly

influencing the struggles over hegemony within *società politica*. Applying Gramsci's terminology and conceptualization places both discourses closer to the coercive core of current struggles over hegemony than, say, media discourses, but their location remains imprecise.

Althusser (1977) proposes one approach towards identifying coercion and consent with specific state apparatuses. Introducing the terms 'repressive state apparatus' and 'ideological state apparatus', he attempts to make more concrete – despite his 'anti-humanism' – Gramsci's concept of 'hegemony' (1977: 122). Althusser emphasizes the mixed character which certain apparatuses can have; that is, they can be simultaneously concerned with repression and ideology production (1977: 121–2; cf. *Projekt Ideologie-Theorie*, 1979: 109–12).

Poulantzas (1978) criticizes both Gramsci and Althusser for only focusing on the negative, purely restricting and/or mystifying practices of the state. Similarly to Foucault (1977), Poulantzas emphasizes the productive aspects of the state (1978: 30). But unlike Foucault, whom he accuses of an 'underestimation of the role of physical repression' (1978: 78), he stresses the concrete materialization of power in the state's apparatuses (what he refers to as 'condensation'; cf. 1978: 123ff.). The possibility for the state to be productive, Poulantzas argues, is based on a '*material substratum*' (1978: 31) which contributes to the production of consensus via concessions to all class fractions and classes, including the masses. Furthermore, and going beyond Althusser's 'descriptive and nominalistic' (Jessop, 2007: 55) definitions of ideological and repressive state apparatuses, Poulantzas emphasizes the relational emergence and functioning of state power which is continuously produced and reproduced through struggle between classes and class fractions, and that results in continuous struggles over, within and between different state apparatuses. Therefore, Poulantzas argues that: (a) single apparatuses may not only be both repressive and ideological but that their primary and concrete function/ing may change with changes in the power relations (Poulantzas, 1978: 33); (b) state apparatuses do not produce a unified discourse, but different discourses for different recipients (1978: 32); and (c) the state apparatuses do not necessarily produce only ideology, but may sometimes tell 'the truth of its

power' (1978: 32), because 'at a certain level tactical elaboration is an integral part of the State's provision to organize the dominant classes' (1978: 32).

Legal expert discourses are, I argue, precisely this: 'tactical elaborations' which are produced for certain recipients; that is, not for the general public or the media but primarily for the criminal justice system. They tell 'truth' in that they do not conceal the coercive kernel of policing by presenting it, for example, as 'fighting crime' or as community control by other means – both of which would be purely ideological reasoning (cf. Harring, 1983: 246; and Belina, 2006: 261–9, respectively). Instead, legal expert discourses within the criminal justice system explain how coercion is to be articulated at a concrete geographical-historical moment. This is why I hope to find some 'truth' (Poulantzas, 1978: 32) in the analysis of the legal expert discourses.

In addition to this argument about the *content* of the legal expert discourses, there is a second reason why they are far 'closer' to what area bans are about and why they are important, deriving from their *form*. As Poulantzas argues, legal discourse is 'supposed to give progressively concrete application to abstract and formal law through a logical-deductive chain ("juridical logic") which is nothing other than the trajectory of an order of domination-subordination and decision-execution internal to the State' (1978: 89). Although Poulantzas is very critical of Pashukanis's (1980) Marxist theory of law, there is a 'hidden dialogue' (Buckel, 2006: 180; cf. Jessop, 2007: 52) between the two when it comes to the *form* of juridical discourse: both argue that the 'juridical form' (Pashukanis) or 'modern law' (Poulantzas) are products of the capitalist nature of the state which are – due to their very form – functional in guaranteeing class domination without being partisan themselves.³

One point which follows from a form analysis of law in the tradition of Pashukanis and Poulantzas,⁴ and which ties it back to its content, is that law translates relations of domination, including the ones rooted in the capitalist mode of production, into an extremely formalized language that must engage in some sort of rational argumentation (as opposed to speculative, agitating or outright absurd types of reasoning which dominate for example media and political discourse). The legal necessity to use precise language and argumentation increases

the possibility that legal expert discourses contain more 'truth' (Poulantzas, 1978: 32) regarding area bans than other, purely ideological, discourses.

There is a second point which follows from the specific form of law and its backing by state power, one that stresses the importance of legal discourse/law. As both Poulantzas and Pashukanis emphasize, law, by its very form, organizes social intercourse in very fundamental ways. It turns individuals into legal subjects as bearers of rights, while at the same time making this legal status the basis of all legitimate social intercourse. In order to become relevant, in a certain sense also in order to become real, a discourse has to be conducted in the form of a legal discourse. As the form of law is rooted in and guaranteed by the state, in a very abstract sense 'right from the beginning, the State marks out the field of struggle and power' (Poulantzas, 1978: 39). But as the state is a social relation, the basic functioning of the form of law is continuously reproduced practically, for example in capitalist exchange relations (as Pashukanis argues) and other everyday, mundane or even 'prosaic' (Painter, 2006) ways.

Summing up the two points made in this subsection, I argue that the writings and arguments employed by courts and legal scholars are directly linked to the coercive kernel of the hegemonic project – much more so than, for example, the bulk of academic or media discourses. The latter are more concerned with the production and diffusion of legitimizing ideologies such as 'taking back public spaces (from visible minorities)', 'zero tolerance' and 'broken windows' and less with legal details such as area bans. What these discourses generally do is to create, stir and use fear (of crime and otherwise) in order to call for a general 'getting tough' including the eviction of undesirables from certain city spaces. These discourses tend to be based on simplifying images which leave no room for differentiating arguments.⁵ Compared to them, legal expert discourses by their very nature have to get involved in precise argumentation about the functioning of concrete policing measures. They are therefore more promising objects of analysis when the aim is to learn about the concrete workings of the state in 'actually existing neoliberalism' (Brenner and Theodore, 2002). With the area bans being part of the local state's strategies of urban renaissance, the ways in which they are interpreted reveals further how exactly the policing of space contributes to this project.

The legal expert discourse

The question then becomes: How do courts and academic experts legitimize area bans? The following analysis is based on the three most relevant court decisions on the subject matter from Bremen (Oberverwaltungsgericht Bremen, 1999), Munich (Bayerischer Verwaltungsgerichtshof, 2000) and an unspecified city in North Rhine-Westphalia (Oberverwaltungsgericht Münster, 2001). In all three cases, the courts had to evaluate the legality of local area bans because legal action was taken by individuals who were issued area bans in these cities. The affirmative commentaries by academics are taken from several annotations in law journals and textbooks. In most cities, the object of area bans is the local market for illegal drugs, sometimes also areas where the homeless, beggars and punks gather. The illegal drug market is a social relation which exists for criminal (i.e. criminalized) purposes. In discursively spatializing this social relation, courts and legal experts assume that it is fixed in and identical to certain city spaces. 'From experience we know that criminal "scenes" (for example the "drug scene") prefer certain places' (Ipsen, 2004: 119). In performing this spatialization, the discourse focuses only on a very small fragment of the illegal drug market.⁶ Following this spatialization, the aim of area bans is 'to prevent the open-air drug scene from becoming fixed in a place and to make unpopular certain highly frequented spots that are known to drug dealers and consumers' (Bayerischer Verwaltungsgerichtshof, 2000: 86). In this statement, the figure of both the drug dealer and the consumer appear in a manner untypical for the criminal justice system: the aim of the area ban, the court says, is not to prevent them from dealing or taking drugs, but from gathering in a certain *space*. This is unusual in that the criminal justice system in Western societies, ever since the creation of the 'criminal' or the 'delinquent' in modernity, aims at *individuals*, at disciplining them; that is, at influencing their personalities (Foucault, 1977). With the area bans something different seems to happen: the problem with drug dealers and consumers, the court says, is not who they are and what they do but *where* they are. It is the merely being there (i.e. loitering around the drug scene in order to watch it; Bayerischer Verwaltungsgerichtshof, 2000: 87) that the city of Munich and the Munich court, for example, find

annoying – annoying enough to make it a subject matter for the criminal justice system.

This criminalization of the ‘merely being there’ exceeds the crimes defined by the national Narcotics Law (BtMG) whose §§ 29–32 cover all acts that have to do with illegal drugs, including buying, selling, smuggling and using them or making them available. Even public promotion of illegal drugs is explicitly criminalized (BtMG § 29, 1, 12). In media discourses especially, it is sometimes assumed that the enforcement of these laws by the police and the courts is weak, and it is true that this might be the case as discretion does exist in parts. Due to the police’s structurally high level of discretion in ‘low visibility decisions’ (Goldstein, 1960) – i.e. in situations where individual police officers’ performances are not controlled by the organization – the incentive to go after every single drug consumer (the German ‘rule of compulsory prosecution’; cf. Langbein, 1974) varies in time and over space, depending for example on human resources and strategies of the local police (Stock, 2000: 64). Furthermore, based on § 31a BtMG, courts can refrain from prosecuting minor drug offences. Yet, in the face of a demonizing media discourse (Schille, 2002a: 345) and a prohibitive drug policy which, as critics point out, produces far more social problems than it could possibly cure (Stöver, 1994: 14–42), the BtMG is enforced. In 2003, a total of 212,491 persons were arrested on drug charges in Germany (former FRG only; Statistisches Bundesamt, 2004). In that year, 46,676 people were convicted on drug charges, a figure which has steadily increased over the past two decades (Statistisches Bundesamt, 2005). This indicates that there is no de-criminalization and no *laissez faire* concerning illegal drugs in Germany, neither *de jure* nor *de facto*. Any drug dealer or user can, and for a good many will, be arrested and prosecuted.

What area bans do, then, is to give the Police *additional* power over individuals who are not drug criminals as defined by a criminal conviction. In the Munich case, the person who took legal action was arrested with 2.3 grams of hashish and his trial was pending (Bayerischer Verwaltungsgerichtshof, 2000: 86). In the North Rhine–Westphalian case, the complainant’s ‘demeanour and his frequent contacts with members of the drug scene’ (Oberverwaltungsgericht Münster, 2001: 460) were regarded as sufficient to issue an area ban, and so

was the alleged intention ‘to approach the drug scene with the intent to buy drugs’ (Oberverwaltungsgericht Bremen, 1999: 317) in the Bremen case. In Bremen, the document issued to people along with the map reproduced in Figure 1 states that the relevant person ‘has come to attention in connection with illegal drugs’ (quoted in Antirassismusbüro Bremen, 1997: 139). More detailed reasons given to individuals included, for example, that the relevant person ‘was present in areas where drug trade is located’, ‘spoke to a junkie’ or ‘behaved conspicuously’ (1997: 137). None of these behaviours is criminalized by the BtMG, but they suffice for an area ban. What they have in common is that they criminalize the mere physical presence in ‘certain places’ (Ipsen, 2004: 119). I will come back to this central aspect in the next section. First, though, the connection made in the legal expert discourses between the physical attribute of being in a ‘certain place’ and ‘crime’ requires more scrutiny, as this nexus is crucial for turning annoying people into objects of policing. This connection is constructed via the notion of ‘danger’.

As one legal expert puts it, ‘hardly anyone will deny that the open-air drug scene *as such* constitutes a relevant danger in the sense of the Police Laws’ (Cremer, 2001: 1218–19; my emphasis). The emphasis put on ‘in the sense of the Police Laws’ needs explanation. German law differentiates, on the one hand, material and procedural Criminal Law that define what constitutes a crime and how it is to be prosecuted⁷ from, on the other hand, the already mentioned Police Laws. The latter define preventive and pro-active police activities designed ‘to ward off looming dangers for public safety and to do away with ones that have already happened’ (Roggan, 2000: 33). Criminal Law aims at criminal prosecution, Police Laws aim at crime prevention. As a consequence of this differentiation, the measures codified in the Police Laws require lower standards concerning probable cause and specification. This is due to the very nature of crime prevention. As Fiske (1998) points out, in discussing surveillance: ‘To be preventive, that is, to be proactive rather than reactive, surveillance has to be able to identify the abnormal by what it *looks like* rather than by what it *does*’ (1998: 83). The same holds true for all types of preventive policing: suspicious appearance, in the case of area bans in combination with location in a certain space, that

may indicate possible criminal acts *in the future* are all prevention can be based upon.⁸ Thus, in the Police Laws, ‘the annoying persons are not present as individuals’ (Roggan, 2000: 33). They are only of interest insofar as they contribute to a ‘danger’. Of course, ‘natural persons are nevertheless affected by preventive policing measures’ (2000: 33).

A measure similar to the area bans of the Police Laws exists in German Criminal Law as part of probation orders (StGB § 56c, 2, 1). The central difference between the two is that using the Police Law gives extra powers to the *executive* without individual court decisions (Trupp, 2002: 461–2). This then legalizes power over individuals who have done nothing illegal but who, by their mere presence, constitute a ‘danger in the sense of the Police Laws’ (Cremer, 2001: 1219). Open-air drug scenes therefore have to be constructed as ‘dangers’ which go beyond the harm done by individual acts of drug dealing etc., and area bans have to be constructed as a means to break up drug scenes; that is, as ‘preventing danger’. Only then can people who do not themselves engage in criminal(izable) activities *legally* be made objects of preventive policing.

Drug scenes as abstract dangers

How, then, is an open-air drug scene constructed as a danger ‘not only by its singular acts but also as a collective event’ (Oberverwaltungsgericht Münster, 2001: 460) that can be prevented by area bans? Legal experts put forward five different arguments, each of which, I will argue, is at least doubtful if not outright ideological, but which, analysed more deeply, points towards the ‘truth’ (Poulantzas 1978: 32) of area bans.

The first argument states that ‘possession of drugs, their consumption and their trade as such threaten public security and order’ (Bayerischer Verwaltungsgerichtshof, 2000: 86). Yet, can this be addressed by area bans? All they can do with regard to these activities is to displace them. They will never keep dealers from dealing and consumers from consuming drugs. Displacement of criminal(ized) activities can occur in different ways as geographical, temporal, tactical, activity-related or target displacement (Clarke, 1983: 245). In the case of an

open-air drug scene, the first three are most likely to occur, especially dislocation. Some experts claim that dislocating the drug market, although ‘not fully appropriate to fight drug commerce [sic!]’ (Prümm and Sigrist, 2003: 167) will nevertheless have a negative effect on its functioning since dealers who are not allowed to set foot on their turf ‘must open up new markets or contact former customers, which will pose some difficulties and should lower sales’ (2003: 167). In this argument, the capability of the drug market’s participants to adapt to changing circumstances – e.g. by using technology, especially mobile phones (Aitken et al., 2002) – is grossly underestimated.

In the literature on police strategies, the claim is often made that no dislocation occurred following different types of ‘break downs’. These claims are usually based on quantitative data (cf. M. Smith, 2001: 71–3). They are unqualified as crime data in general and data concerning drug offences in particular are no valid measure of the actual occurrence of illegal drug commerce at all. As they only tell us what the police register and classify, crime statistics basically ‘reflect the policies and behaviors of the agencies administering criminal law’ (Quinney, 1977: 108). In the special case of drug offences, this is even more evident. As these are hardly ever reported, the police themselves, by their control activities, ‘to a large degree construct what appears as crime reality in the statistics’ (Stock, 2000: 51). Even when other indicators are used, this problem remains (cf. Agar and Schacht Reisinger, 1999). Here only qualitative research can provide any serious understanding about the effects of police work on drug markets. This type of research reveals a constant relocation of drug scenes due to police pressures (cf. Uhl and Spinger, 1997: 35–6). Focusing on one police ‘crack-down’ operation, Aitken et al. (2002) conclude that its main effects on the drug market were displacement to other areas and ‘more clandestine and sophisticated methods’ (2002: 201). Furthermore, they conclude ‘that the operation discouraged safe injecting practice and safe disposal and increased the frequency of occurrences of violence and fraud’ (2002: 201). Taken together, these arguments should make clear that area bans cannot do anything about the ‘drug problem’.

Besides, and going back to the legal construction of the drug scene ‘as such’ as a ‘danger’, a far more fundamental point must be made: all the individual

acts mentioned by the court – ‘possession of drugs, their consumption and their trade’ (Bayerischer Verwaltungsgerichtshof, 2000: 86) – are, of course, already criminalized by the Narcotics Law and do not explain why the open-air drug scene ‘as a collective event’ (Oberverwaltungsgericht Münster, 2001: 460) constitutes a ‘danger’ that goes beyond these individual acts. Thus, this first argument cannot plausibly be used to legally extend the power over undesirables because of their mere presence in a ‘dangerous’ place.

The second argument of the expert discourse says that open-air drug scenes constitute a danger ‘because of the violations of the Narcotics Law that [...] are *planned* there’ (Oberverwaltungsgericht Bremen, 1999: 317; my emphasis), which is, of course, the key economic function of an open-air drug scene. Illegal markets function in a more clandestine way than legal ones, including as one possible tactic the spatial separation of planning and realization of drug deals. However, drug market participants know how to respond to police attempts at dislocating open-air drug scenes, for example by relying on mobile phones. More crucial for the legal construction of a ‘danger’, the planning of drug activities is criminalized in BtMG § 29, 1, 10 and enforcing this aspect of the law is everyday police work.

One court emphasizes, as a third argument, that ‘offering drugs to a third party’ in open-air drug scenes may ‘draw people who were so far uninvolved into the maelstrom of drug abuse’ (Bayerischer Verwaltungsgerichtshof, 2000: 86). This argument is dubious because it assumes that people start taking drugs because they are available. Empirical research on the ‘first contact’ of especially young people with drugs (Böhnisch, 2002) as well as on the transition from ‘experimental’ to ‘habitual’ drug use (Schille, 2002b) show instead that the individual’s specific social context (friends, family, social status) is the crucial starting point for understanding the use of illegal(ized) drugs. If the argument is not about the mere availability of drugs but about the temptation which drug scenes constitute, ethnographic research in the open-air drug scene in Vienna, for example, shows that their participants describe their first contact with the scene as a planned endeavour (Uhl and Springer, 1997: 45–6). The first motivation to try certain drugs is not induced by the mere existence of a drug scene. Furthermore, the research emphasizes that, for street dealers, a strategic approach to entice

innocent passers-by goes far beyond their everyday routine and capabilities (1997: 48). Concerning the legal argumentation, again, offering illegal(ized) drugs is prohibited already in BtMG § 29, 1.

A fourth argument often put forward concerns the ‘large amount of used needles around the drug scene and the danger of injury and infection for third parties’ (Oberverwaltungsgericht Münster, 2001: 459). This is a serious problem, especially for children – but will not be addressed by dislocation. As the findings referred to above indicate, quite the contrary seems to be the case (Aitken et al., 2002: 201). The problem is, arguably, much better addressed by giving addicts the opportunity to dispose of needles safely, for example in needle exchange programmes (also reducing Aids infections among drug users; cf. Gent, 2000), or simply by cleaning up. None of these solutions reduces needles to an abstract ‘danger’ that calls for preventive policing but regards them as a problem necessarily following from illegalized drug use and one which can and has to be addressed in its own right.

Finally, a fifth argument is sometimes brought forward, stating that due to drug scenes ‘whole city neighbourhoods will change their social structure as they will be avoided due to potential dangers’ (Bayerischer Verwaltungsgerichtshof, 2000: 86). This assumption, derived from the ‘broken windows’ thesis (Wilson and Kelling, 1982; for a critique see Harcourt, 1998; Belina, 2006), links the visible appearance of city spaces to changes in residual patterns via the notion of (perceived) ‘danger’. In so doing it abstracts from politico-economic processes that drive residential patterns (cf. N. Smith, 1996) and works with an oversimplifying and moral-based distinction between ‘orderly’ and ‘disorderly’ people (Harcourt, 1998: 304). Furthermore, this assumption supposes that social decay can be changed by dislocating drug scenes, which, if the nexus exists at all, can only lead to decay in other parts of the city.

These five arguments are put forward to construct open-air drug scenes as ‘dangers’ supposedly beyond singular, already criminalized, acts which can be resolved by issuing area bans. Yet, none of these arguments is plausible. None of them tells us much in ways of ‘truths’ concerning illegal drug trade. Nevertheless, they are sufficient to equip the police with the authority to exert preventive power over individuals who have done nothing illegal (i.e. nothing that can be criminalized). As no other

reason for the introduction of area bans is convincing, I conclude that it is precisely this additional legal power given to the police that is the reason for their introduction. Area bans are a method of what Cohen (1985) terms 'net widening', meaning a continuous expansion of social control through state agencies. However, this does not mean that the expert discourse consists of nothing but lies. In the remaining part of this article, I want to argue that the contrary is the case, and that this discourse is full of 'truth' – not about drug scenes, though, but about *governing* drug scenes.

Conclusion: 'policing space' as a *legal* means to promote the entrepreneurial city

In this Conclusion I want to come back to the argument concerning the relationship between policing *space* and the neo-liberal urban renaissance announced in the Introduction. I want to argue that the legal legitimization of area bans and its spatial logic stand for a specific kind of 'policing space' that is functional in the articulation of neo-liberal state power in city spaces, and that deserves closer attention in the context of political, urban and legal geography. I want to make three related points. First, I want to discuss how the *spatial* logic of area bans makes a certain type of abstract governing possible. Second, I want to show how this type of governing serves the needs of a neo-liberal urban renaissance. Third, I want to emphasize the role law and legality play in this neo-liberal approach to governing city spaces.

In constructing 'drug scenes as such' as *spatialized* 'dangers', location in space is abstracted from the complex totality of the 'drug problem'. As Sayer emphasizes in his treatment of the notion of 'abstraction', it is important 'to keep in mind what we abstract *from*' (Sayer, 1999: 86). In the case of the area bans, all other aspects of the 'drug problem' are abstracted from and thus treated as irrelevant for its understanding and 'solution'. When keeping drug dealers and users from gathering in certain places is presented as a 'solution', all social, psychological and other aspects of drug use and the problems which come with it (different ones for users and the state!) are abstracted from. When this *mental* abstraction forms the basis of *real world* policing, its spatial fetishism is transferred into social reality as a strategy

of governing through spatialization (Belina, 2006). In practically reducing a *social* problem to a *spatial* one, area bans contribute to a 'new strategic formation in the penal field' (Feeley and Simon, 1992: 449) that is:

... markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. Rather, it is concerned with techniques to identify, classify, and manage groupings sorted by dangerousness. The task is managerial, not transformative ... It seeks to *regulate* levels of deviance, not intervene or respond to individual deviants or social malformations. (Feeley and Simon, 1992: 452)

Following Foucault's (2004) notion of governmentality, this new approach to policing is often characterized as 'governing at a distance' in which 'attention is being shifted to dealing with the effects of crime ... rather than its causes' (Garland, 1996: 447). It makes a lot of sense to interpret the shift from the disciplining of drug users to the dislocation of spatialized drug scenes as exactly this: When junkies do not surface as individuals who have or cause problems which have anything to do with social process, situatedness or ascription (as is the case in the legal expert discourse legitimizing the area bans), but rather are reduced to a spatialized 'abstract danger', then all social causes of the 'drug problem' are abstracted from and only one of its many spatial effects – open-air drug scenes – is dealt with. Further, when open-air drug scenes are reduced to spatialized 'abstract dangers', junkies and others who gather in that particular space are constructed as a group whose 'group identity' is constituted solely by location in space. This spatially defined group formation through police practices is 'productive' in that it legally overcomes law's separation and individualization of legal subjects (cf. Poulantzas, 1978; Pashukanis, 1980; Demirovic, 1987: 73–5) in order to form a legal basis for treating the members of the spatially defined group as an 'abstract danger'. In the case of the area bans, as with a whole range of other spatialized measures of policing (cf. Belina, 2006), it is this very spatialization of social phenomena that makes this specific type of 'governing at a distance' possible.

This interpretation should, however, not be the end of the story. After all, it does not explain why some particular spatialized social phenomena are

governed in the ‘distanced’ manner of dislocation. In order to do that, we need to look at who is being ‘governed at a distance’; that is, we need to relate the abstract principle of governing at a distance through spatializing social problems to the root causes of these social problems themselves.

The ‘abstract danger’ that the open-air drug scene is turned into in legal expert discourse is also abstract in another sense: it is a danger not so much for drug users, their peers or neighbourhoods, not so much for social cohesion or the labour market – all of which, from different standpoints, could be understood as being ‘threatened’ in a somewhat concrete sense by individuals who use illegalized drugs – but one for the *entrepreneurial city*. Open-air drug scenes, on a very abstract level, constitute a danger for a city that has to ‘appear as an innovative, exciting, creative, and safe place to live or to visit, to play and to consume’ (Harvey, 1989: 9). For a city to live up to this image, pro-active policing which is ‘able to identify the abnormal by what it *looks like*’ (Fiske, 1998: 83) makes a lot of sense. This is, I argue, why and how the spatialization of crime and policing is particularly suitable to control the ‘social externalities of narrowly marketcentric forms of neoliberalism’ (Peck and Tickell, 2002: 388) in the city. The spatial abstraction ‘open-air drug scene = danger’ serves the specific needs of cities drawn into interurban competition. This is how ‘policing space’ is linked to ‘actually existing neoliberalism’: the *legal* ‘social cleansing’ (N. Smith, 2001) of city spaces serves as a means to promote the entrepreneurial city (cf. Mair, 1986; Mitchell, 1997; Belina and Helms, 2003). Policing visible impoverishment by ‘managing and containing the new surplus population’ (Parenti, 1999: 45) becomes a task of the repressive state apparatuses (cf. Wacquant, 2000; 2001). The spatial logic of the area bans that equates gathering places of the superfluous with ‘danger’ provides the legitimation to do so.

This process is not specific to neo-liberalism (cf. Hubbard, 2004: 670). But the recent date of introduction of the area bans in Germany (cf. Table 1) makes it plausible to regard them as one (of many) practical measures which repressive state apparatuses implement in the course of ‘roll-out neoliberalism’ (Peck and Tickell, 2002). This is not to say that the eviction of visible minorities is the only strategy applied to get a grasp on them or that this effort is ever completed (MacLeod, 2002; Belina and Helms, 2003). But it definitely is a widely

applied spatial strategy in which the reliance on the executive branch of the repressive side of the state apparatuses becomes more evident.

The aspect of the *legality* of this ‘purification of space’ (Sibley, 1988) – i.e. its ‘legal geography’ – is worth some more scrutiny. It is in the legal expert discourse’s construction of a *legal* way to deal with social phenomena via their spatialization that ‘the State proclaim[s] the truth of its power at a certain “real” level’ as part of a ‘tactical elaboration’ (Poulantzas, 1978: 32). The courts, backed by affirmative expert commentators, *legally* give the power to dislocate those whom the executive finds undesirable from certain city spaces. This ‘truth’ results in practical displacement, and it does so in a rather direct and powerful manner because it comes from close to the coercive core of the state and because it is put in the *form of law* (cf. ‘The legal expert discourse’ above). As this is the very form in which, according to Pashukanis (1980) or Poulantzas (1978), social intercourse in capitalist societies takes place and *has to* take place in order to become socially effective, it is crucial for the governing of undesirables by dislocation to be conducted in a legal manner. It is crucial, then, that the expert discourse which legitimizes area bans turns open-air drug scenes *legally* into something they are already *politically* in the entrepreneurial city: abstract dangers which are not to be treated as *social* phenomena, but instead reduced to *spatial* problems. This act of legitimizing via spatializing, this ‘legal geography’, is therefore crucial for the governing of city spaces ‘at a distance’ in capitalist states, and it is, I argue, the reason why certain ‘conceptions of space and crime’ are on the agenda in ‘the punitive neoliberal city’ (cf. Belina, 1999; 2006; Herbert and Brown, 2006).

The manoeuvre of practically turning social problems into spatial ones both politically and legally is part and parcel of a much wider development concerning the contemporary functioning of state power. The discourse that legitimizes area bans is one of many ways to legally give more power to the ‘prerogative state’, defined by Fraenkel (1941: 3) as ‘the governmental system which exercises unlimited arbitrariness and violence unchecked by any legal guarantees’. On the ‘street level’ of urban policing, area bans, by putting all powers of definition and decision in the hands of the executive, do exactly that. And they do it based firmly on the rule of law. As in Fraenkel’s analysis of

the continuity of this principle in Nazi Germany, the 'normative state' (i.e. the legal system) remains intact and the extra powers given to the government's executive and administration have a legal basis.

This is not to say that Germany's criminal justice system today is equivalent to that of 1933–45, definitely not. The Police and the Administration (here, the Town Clerk's office) today do not have 'complete discretionary power' (Kirchheimer, 1996: 180), criminal law is not fully converted 'into an administrative technique' (1996: 185) and, especially, the German state today is not a fascist state based on a racist ideology. Rather, it is a capitalist state in which neo-liberal ideologies loom large and neo-liberal restructuring leaves an increasing number of people superfluous from the viewpoint of capital accumulation. Add to this their astonishing political harmlessness, and their treatment as an 'abstract danger' makes a lot of sense in yet another respect. On the level of the state's governing of the neo-liberal 'maintenance, reconstruction, and restoration of elite class power' (Harvey, 2005: 188), no 'outbreaks of civil disorder' (Piven and Cloward, 1993: xv) must be feared. There is little resistance against the dismantling of the welfare state and the hollowing-out of civil liberties which materialize, for example, in the dislocation of visible minorities from urban spaces. This constellation of power relations with their condensation within the state apparatuses is reflected in the success of the 'strong preference [which] exists for government by executive order and by judicial decision rather than democratic and parliamentary decision-making' (Harvey, 2005: 66). One version of this is the strategy applied in Bremen (see the chronology above): The executive (especially the Police) introduces new measures of policing and creates a state of necessity for the legislative to follow behind by introducing new laws and regulations (for further recent examples of this strategy in Germany see Becker, 2005). On a structural level (and, certainly, neither in extent nor in content), this relation between a powerful and proactive executive and a weak legislative in practical policing reveals similarities between the current criminal justice system and the one during the Nazi period.⁹ The fact that in both cases the 'rule of law' remains intact sheds light on its flexibility and on the fact that it is by no means an 'unqualified human good, or even [...] of a fundamentally different order to the practices of executive power, discretionary acts and police decisions' (Neocleous, 2000: 108), but rather 'a form of

government by men who *use* law to legitimise the exercise of power' (2000: 113).

In this article I have tried to stress the importance of focusing on the 'legal geographies' inherent in 'policing space', and that these geographies can best be explained by linking them to the workings and articulations of state power. I hope to have demonstrated that 'answers to the "why" questions' (Hudson, 2006: 385) of 'policing space' can best be found by (re-)turning to Marxian materialist state theory that allows for a powerful theorizing of state, law and space as social relations, and their mutual relationships. Lately, a lot has been made in Geography and elsewhere of Foucault's (2004) notions of governmentality and biopolitics and Agamben's (2004) theorizing of the 'state of exception' as being at once within and outside the legal order (cf. Merry, 2001; Gregory, 2003; Amoore, 2006; Minca, 2006). While I hold these to be extremely important discussions in order to understand the sort of developments discussed in this article, these debates often fail to locate the reasons for the emergence of the 'security dispositif' and the 'state of emergency' – and thus answering the 'why questions' – in concrete social processes and developments which have a lot to do with the political economy of today's capitalism. It is for these reasons that this article has taken a different route, drawing on and developing the multiple insights which Marxian materialist state theory (by authors as diverse as Pashukanis, Gramsci and Poulantzas) has to offer so as to further our understanding of how the current security dispositif has emerged out of conflictual social processes which are deeply rooted in the contradictions of political economy.

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Notes

¹ All translations by the author.

² All quotes from Gramsci's prison notebooks, originally written between 1929 and 1935, come from their German

complete edition, published in ten consecutively paginated volumes between 1991 and 2002.

- 3 Materialist state theory has often and rightly been criticized for tending to reduce the various existing forms of domination to class domination. Applying this criticism to Poulantzas's state theory would result in an understanding of 'modern law' as the condensation of various power relations, including those of gender, race, ethnicity etc. (Buckel, 2006: 177–9; Wöhl, 2007).
- 4 There are important differences between Pashukanis and Poulantzas. Whereas Pashukanis derives the form of law from an analysis of capitalist *exchange* in which 'guardians of commodities mutually recognise in each other the rights of private proprietors' (Marx, 1988: 99), Poulantzas emphasizes that '[t]he roots of this specific feature ... have to be sought in the social division of labour and the relations of *production*' (1978: 86; my emphasis). But as surplus production cannot do without circulation (cf. Marx, 1988: 179–81), the two types of argumentation are not mutually exclusive but must rather be combined (cf. Hirsch and Kannankulam, 2006).
- 5 For critiques of many of these media and academic discourses cf. Belina (1999; 2006); Belina and Helms (2003); Harcourt (1998); Innes (1999); Mitchell (1997); N. Smith (1998; 2001); Wacquant (2000).
- 6 According to a statement by the Chief of Police of the city of Essen, for example, the local open-air drug scene of approximately 50 persons is only a small part of the estimated 3,500–5,000 people using illegal drugs regularly in that city (Belina and Helms, 2003: 1864).
- 7 Criminal Law in the strict sense is codified by the central state (StGB, StPO, BtMG).
- 8 In the motion picture *Minority Report* (2002), in the year 2054 'Pre-Cops' prevent crimes before they happen, based on visions of three 'Pre-Cogs'. Tellingly, although technical solutions are found for all aspects of everyday life in this science fiction movie, crime prevention is still based on clairvoyance.
- 9 The area bans even have a forerunner in a measure introduced into the Prussian Police Law in 1934 by then minister of the interior Göring (cf. Trupp, 2002: 467–72).

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